

March 30, 2009

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

AIG ANNUITY INSURANCE
COMPANY,

Plaintiff - Appellee,

v.

LAW OFFICES OF THEODORE
COATES, P.C.,

Defendant - Appellant,

MARC E. BENNETT; HARTFORD
INSURANCE GROUP,

Defendants - Appellees,

and

DONALD J. EGAN, M.D.; KRISTI S.
BENNETT,

Defendants.

No. 09-1030
(D.C. No. 1:07-CV-01908-MSK-MJW)

ORDER

Before **MURPHY**, **McCONNELL** and **HOLMES**, Circuit Judges.

This court lacks jurisdiction over this appeal because all of the claims against all of the parties have not been finally adjudicated, *see* Fed. R. Civ. P. 54(b), and no other exception to the final judgment rule is applicable.

Pursuant to *Lewis v. B.F. Goodrich*, 850 F.2d 641, 645-46 (10th Cir. 1988) (10th Cir. 1988), this court gave the plaintiff an opportunity to obtain either a final judgment or a Rule 54(b) certification from the district court. The district court indicated that it would not certify the order being appealed under Rule 54(b).

The appellant argues that this court has jurisdiction even without the certification under the collateral order doctrine. The argument is without merit.

“The requirements for collateral order appeal have been distilled down to three conditions: that an order (1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment.” *Will v. Hallock*, 546 U.S. 345, 349 (2006) (quotations omitted). All three requirements must be met. *Mesa Oil. Inc. v. United States*, 467 F.3d 1252, 1254 (10th Cir. 2006).

Here the order being appealed fails on two grounds. One, it is not separate from the merits, as the district court determined the merits of some of the claims and dismissed one of the defendants. Second, the order is not effectively unreviewable on appeal from a final judgment. In order to meet this requirement,

a right to avoid trial “that would imperil a substantial public interest” is required.

See Hallock, 546 U.S. at 959. No such right is present here.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Ellen Rich Reiter".

Ellen Rich Reiter
Deputy Clerk/Jurisdictional Attorney